



Robbins Schwartz
One Team. Making Your Mission Ours.

TRAINING FOR KANKAKEE COMMUNITY COLLEGE TITLE IX PERSONNEL

Legal Services

August 29, 2022

Emily P. Bothfeld
ebothfeld@robbins-schwartz.com

Eliza B. Kaye
ekaye@robbins-schwartz.com

Chicago
55 West Monroe Street, Suite 800
Chicago, IL 60603
p 312.332.7760
f 312.332.7768

Champaign-Urbana
301 North Neil Street, Suite 400
Champaign, IL 61820
p 217.363.3040
f 217.356.3548

Collinsville
510 Regency Centre
Collinsville, IL 62234
p 618.343.3540
f 618.343.3546

Lisle
550 Warrenville Road, Suite 460
Lisle, IL 60532
p 630.929.3639
f 630.783.3231

Rockford
2990 North Perryville Road, Suite 4144B
Rockford, IL 61107
p 815.390.7090



Training for Kankakee Community College Title IX Personnel



Presented By:
Emily P. Bothfeld &
Eliza B. Kaye
August 29, 2022

1

Background on Title IX Regulations



2

Background on Title IX Regulations

- On May 6, 2020, the U.S. Department of Education released new Title IX regulations establishing how education programs that receive federal funding must respond to sexual harassment under Title IX.
- Among other changes, the new regulations prescribe a narrower definition of sexual harassment than in previous Title IX guidance, and they require higher education institutions to follow detailed procedures—to include a live hearing with cross-examination—when adjudicating formal Title IX sexual harassment complaints.
- The regulations went into effect on August 14, 2020.



3

Changes on the Horizon

- Since taking office, President Biden and his Administration have issued key guidance documents interpreting the 2020 regulations and taken action/steps to amend certain aspects of the regulations.
 - March 2021 Executive Order
 - April 2021 Letter to Stakeholders
 - June 2021 Title IX Public Hearing
 - July 2021 Question & Answer Document
 - Updated June 28, 2022
 - June 23, 2022 Notice of Proposed Rule-Making Released
 - Effective date of new regulations: TBD
 - 2020 Regulations remain in effect.



4

Overview of Relevant Laws



5

Relevant Laws

- The relevant requirements of the below laws have been incorporated into the College's Sex-Based Misconduct Policy and Procedures:
 - Title IX of the Education Amendments of 1972 ("Title IX")
 - Title VII of the Civil Rights Act of 1964 ("Title VII")
 - Preventing Sexual Violence in Higher Education Act ("PSVHEA")
 - Illinois Human Rights Act ("IHRA")
 - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act")
 - Violence Against Women Act ("VAWA")

6

Relevant Laws

- Title IX: Prohibits sex-based discrimination, including sexual harassment, in educational programs and activities receiving federal financial assistance.
- Title VII: Prohibits discrimination, including discrimination based on sex, in employment.



7

Relevant Laws

Preventing Sexual Violence in Higher Education Act:
Requires Illinois higher education institutions to adopt comprehensive policies concerning sexual violence, domestic violence, dating violence and stalking.

Illinois Human Rights Act:

- Prohibits discrimination in Illinois, including in employment.
- Also prohibits sexual harassment in elementary, secondary and higher education.



8

Relevant Laws

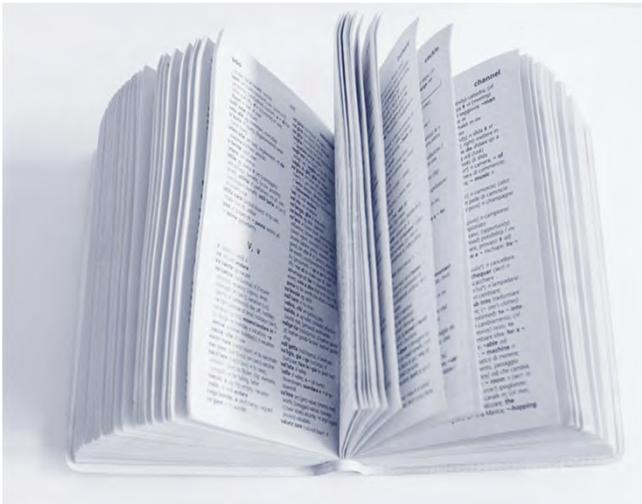
Clery Act: Requires institutions to maintain and disclose crime statistics and security information.

Violence Against Women Act: Expands the rights afforded to campus survivors of sexual assault, domestic violence, dating violence, and stalking.



9

Key Definitions



10

Title IX Sexual Harassment

- Sexual harassment includes:
 - Quid pro quo harassment by a college employee
 - Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access
 - Any instance of sexual assault, dating violence, domestic violence or stalking (as defined in Clery Act/VAWA)



11

Title IX Sexual Harassment: Quid Pro Quo

- When an employee of the college conditions aid, benefits, pay, a position or other opportunities for advancement on an individual's submission to unwelcome sexual conduct.
 - Example: Professor Jones promises his student, Jane, that he will give her an A on her midterm if she engages in sexual conduct in his office after class.



12

Title IX Sexual Harassment: “Hostile Environment”

- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
 - Severe and pervasive and offensive
 - Denial of equal educational access



13

Title IX Sexual Harassment: “Hostile Environment”

- Compare with Title VII definition for workplace hostile environment claims:
 - Unwelcome sexual advances and other conduct of a sexual nature having the purpose or effect of interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.



14

Title IX Sexual Harassment: “Hostile Environment”

- Compare with IHRA definition:
 - Any conduct of a sexual nature exhibited by an education representative toward a student, when such conduct has the purpose of substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment.

Title IX Sexual Harassment: Other Categories

- Title IX’s definition of sexual harassment also includes:
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- As defined under Clery Act/VAWA



Sexual Assault, Dating Violence, & Stalking

- Sexual Assault:
 - An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.
- Dating Violence
 - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- Stalking
 - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.



17

Title IX Sexual Harassment: Domestic Violence (2022 VAWA)

- Domestic violence includes:
 - felony or misdemeanor crimes committed by a current or former spouse or intimate partner under the laws of the jurisdiction and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse; or
 - a pattern of any other coercive behavior (not necessarily criminal) committed, enabled, or solicited to gain or maintain power and control over a victim, by a person who:
 - is a current or former spouse or intimate partner, or person similarly situated to a spouse of the victim;
 - is cohabitating or has cohabitated with the victim as a spouse or intimate partner;
 - shares a child in common with the victim; or
 - commits acts against an adult or youth victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



18

Preventing Sexual Violence in Higher Education Act: Sexual Violence

- Physical sexual acts attempted or perpetrated against a person's will or when a person is incapable of giving consent, including without limitation:
 - Rape;
 - Sexual assault;
 - Sexual battery;
 - Sexual abuse; and
 - Sexual coercion.



19

Preventing Sexual Violence in Higher Education Act: Sexual Violence and Consent

- The PSVHEA requires that institutions adopt a policy which includes a definition of consent consistent with the Act, 110 ILCS 155/10.
- Consent:
 - Must be freely given
 - May not be inferred from lack of verbal or physical resistance, from submission resulting from the use of threat or force, from a person's manner of dress, from a person's consent to past sexual activity, or from a person's consent to engage in sexual activity with another person
 - May be withdrawn at any time
 - Cannot be given by a person who is unable to understand the nature of the activity or give knowing consent due to circumstances (i.e. incapacitation due to alcohol or drugs, age, incapacitation due to mental disability)



20

Key Definitions: Hypothetical

- You have been assigned to investigate a formal complaint alleging that a student member of the Debate Club was sexually harassed by the Club advisor.
- What types of evidence/information would be relevant to determining whether the alleged harassment was severe, pervasive and objectively offensive?

21

Jurisdiction



22

Jurisdiction Under Title IX

- The Title IX regulations apply only to alleged sexual harassment that occurs “in the institution’s education program or activity, against a person in the United States.”



23

Title IX Jurisdiction: Scope of College’s Education Program or Activity

- Includes:
 - Locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurred; and
 - Any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.



24

Title IX Jurisdiction: Scope of College's Education Program or Activity

- Examples for discussion:
 - An athletic van while traveling to an out-of-state competition
 - Off-campus clinical site
 - On campus at 2:00 am on the weekend



25

Jurisdiction: “... in the United States”

- To fall under Title IX, the alleged misconduct must have occurred in the United States.
 - If not, look to other applicable laws (e.g., PSVHEA)
- Example: sexual assault that occurs during study abroad program?

26

Jurisdiction: Hypothetical

- Compare:
 - A faculty member allegedly sexually assaults a student while at an off-campus academic conference
 - A faculty member allegedly sexually assaults another faculty member while at a third faculty member's home for a birthday party
- Which type of alleged misconduct falls under Title IX?
- What are The College's response obligations with regard to each type of alleged misconduct?



27

Policy Prohibiting Sex-Based Misconduct



28

Policy Prohibiting Sex-Based Misconduct

- Prohibits all forms of “sex-based misconduct,” including but not limited to:
 - Sex discrimination
 - Sexual harassment
 - Sexual violence
 - Domestic violence
 - Dating violence
 - Stalking



29

Policy Prohibiting Sex-Based Misconduct

- Applies to:
 - Students
 - Employees & independent contractors
 - Volunteers
 - Visitors
 - Board members



30

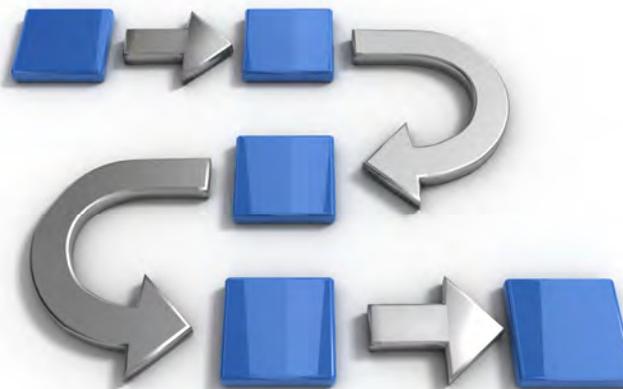
Policy Prohibiting Sex-Based Misconduct

- Prohibits retaliation against any person reporting alleged sex-based misconduct or participating in an investigation of alleged sex-based misconduct
- Directs the administration to establish, maintain and publish procedures implementing the College's Sex-Based Misconduct Policy.



31

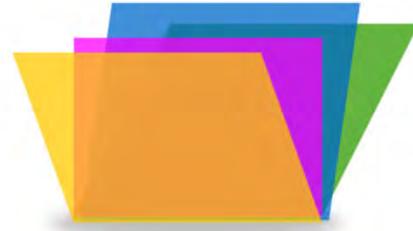
Sex-Based Misconduct Procedures



32

Purpose of Procedures

- Implement the College's Policy Prohibiting Sex-Based Misconduct and the College's Discrimination and Harassment Policy.
- Ensure a safe and healthy educational and employment environment.
- Meet relevant legal requirements.



33

Jurisdiction

- Procedure applies to alleged sex-based misconduct whenever the alleged misconduct occurs:
 - On campus; or
 - Off campus property if:
 - The conduct was in connection with a College or College-recognized program or activity; or
 - The conduct may have the effect of creating a hostile environment for a member of the College community.
- Broader than Title IX jurisdiction

34

Role of Title IX Coordinator

- Coordinate the College's compliance with Title IX and related laws.
- Oversee the College's response to all reports of alleged sex-based misconduct.
- Analyze reports to determine appropriate method for processing and reviewing.
- Oversee grievance process for formal Title IX/PSVHEA complaints.
- Coordinate the provision of supportive measures and implementation of remedies.
- Ensure adherence to policies/procedures.
- Ensure appropriate training is provided to students, faculty and staff.



35

Options for Assistance Following Incident of Sex-Based Misconduct

- Healthcare
 - Riverside Medical Center
 - Amita Health St. Mary's Hospital
- On-campus support
 - Michelle Thorpe, Transformative Growth Counseling
- Off-campus advocacy and support
 - Kankakee County Center Against Sexual Assault
 - Riverside Behavioral Medicine
- Illinois Department of Human Rights sexual harassment and discrimination helpline



36

Reporting Alleged Sex-Based Misconduct



 Robbins Schwartz
One Team. Making Your Mission Ours.

37

Reporting Generally

Who can report?

- Anyone – including students, employees and community members
- Need not be the person who is alleged to be the victim of the misconduct

To whom should reports be made?

- Title IX Coordinator
- College administrator
- Any responsible employee (students only)

 Robbins Schwartz
One Team. Making Your Mission Ours.

38

Student Reporting

- Reporting to Responsible Employees
 - The College's REs include:
 - Title IX Coordinator
 - College Administrators
 - Supervisors and Managerial Staff
 - Faculty
 - Campus Police
 - Athletic Coaches
 - Student Club Advisors
 - REs must report all relevant details to the Title IX Coordinator, if known.



39

Student Reporting

Confidential Reporting

- The College's designated Confidential Advisor is:
 - Michelle Thorpe, Transformative Growth Counseling
- Confidential Advisors are not required to report any information about an alleged incident to the Title IX Coordinator without the student's permission.



40

Student Reporting

- Anonymous and/or Electronic Reporting
 - Students may report anonymously online.
 - Before the student enters information, the system will notify the student that entering personally identifiable information may serve as notice to the College for purposes of triggering an investigation.



41

Employee Reporting

- Employees should report to:
 - Title IX Coordinator
 - Director of Human Resources



42

College's Response to Reports of Alleged Sex-Based Misconduct



 Robbins Schwartz
One Team. Making Your Mission Ours.

43

“Deliberate Indifference Standard” Under Title IX

- The College must respond to allegations of Title IX sexual harassment promptly and in a manner that is not clearly unreasonable in light of the known circumstances.

 Robbins Schwartz
One Team. Making Your Mission Ours.

44

College Response: Definitions

- Complainant:
- Individual who is alleged to be the victim of alleged sex-based misconduct
- Respondent:
- Individual who is reported to be the perpetrator of alleged sex-based misconduct



45

College Response Process

- Step 1: Analyze the Report.
 - Does Title IX apply?
 - Does the Preventing Sexual Violence in Higher Education Act apply?



46

Title IX: Jurisdiction Analysis



If NO to any:

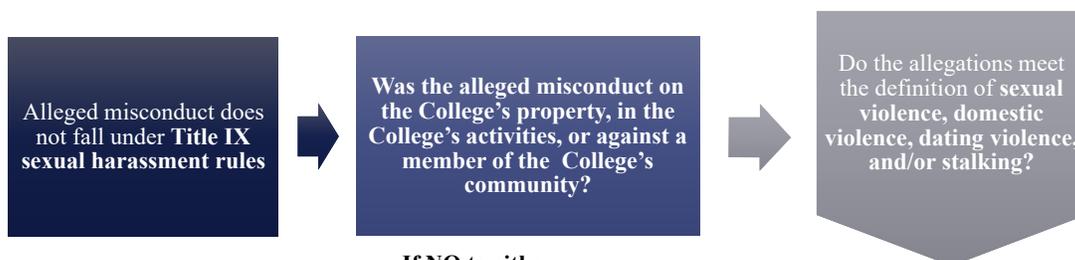
Proceed to PSVHEA analysis; check College Policy, other applicable laws

If YES to all:

Promptly contact the complainant to discuss (1) supportive measures and (2) options for filing a formal complaint.

47

Preventing Sexual Violence in Higher Education Act: Jurisdiction Analysis



If NO to either:

Check College Policy, other applicable laws

If YES to both:

Promptly contact the complainant to discuss (1) supportive measures and (2) options for filing a formal complaint.

48

College Response Process

Step 2: Contact the complainant.

- “Complainant” is defined as the individual who is alleged to be the victim of alleged sex-based misconduct



College Response Process

- Step 3: Discuss and offer supportive measures.
 - Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party
 - Designed to ensure equal educational access, protect safety, or deter sexual harassment
- Step 4: Explain the process for filing a formal complaint.

Questions?



51

Grievance Process for
Formal Complaints



52

Grievance Process for Formal Complaints

- Formal complaint:
- Document filed by a complainant or signed by Title IX Coordinator alleging
 - (a) sexual harassment in violation of Title IX and/or
 - (b) sexual violence, domestic violence, dating violence or stalking in violation of the PSVHEA.
- At the time the complainant files a formal complaint, the complainant must be participating in or attempting to participate in the College's education programs or activities, (either as a student or an employee).



53

Formal Complaint Hypothetical

- Paula graduates in June. In July, Paula applies for a research assistant position at the College for the upcoming fall semester. Paula finds out that the faculty member assigned to review her research assistant application is her former Biology instructor, who made inappropriate and offensive sexual comments toward Paula when she was in his class. The student contacts the Title IX Coordinator and states that she would like to file a formal Title IX sexual harassment complaint against the faculty member.
- Can Paula file a formal Title IX complaint? Why or why not?



54

Grievance Process: Notice of Allegations

- Must be sent simultaneously to both parties after Title IX Coordinator's receipt of formal complaint.
- Informs the parties of:
 - The grievance process, including informal resolution options
 - The allegations
 - The presumption of non-responsibility on the part of the respondent
 - The parties' right to an advisor
 - The parties' right to inspect and review evidence
 - The Code of Conduct provisions prohibiting knowingly furnishing false information during the grievance process.



55

Grievance Process: Emergency Removals and Administrative Leave

- Prior to initiating or completing the grievance process in response to a formal complaint, the College may remove a respondent from its education program or activity on an emergency basis.
 - Only permitted where College has determined, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of an individual arising from the allegations of sexual harassment justifies removal.
- The College must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.



56

Grievance Process: Emergency Removals and Administrative Leave

- The College may place an employee on administrative leave during the pendency of the grievance process in response to a formal complaint.



57

Conflicts of Interest & Bias



58

Conflict of Interest & Bias

- Any Title IX Coordinator, Investigator, Decision-Maker, or Appellate Decision-Maker must not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.
- Can be a basis for appeal



 Robbins Schwartz
One Team. Making Your Mission Ours.

59

Conflict of Interest & Bias

- Conflict of interest:
 - “A situation in which the concerns or aims of two different parties or people are incompatible.”
 - Not: “I know both parties.”
- Bias:
 - “Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.”

 Robbins Schwartz
One Team. Making Your Mission Ours.

60

How to Address Implicit Bias



- More deliberate or conscious thinking
 - Allow time to fully think through a scenario before coming to a decision / conclusion
- Create and follow checklists
 - Procedural requirements
 - Allegations to be proven / disproven
- Document treatment of both parties and ensure it remains equitable
 - Opportunities to provide evidence
 - Details of the parties' interviews (time to prepare, breaks, advisors' roles, etc.)
 - Access to relevant evidence
 - Offering flexibility or granting requests for accommodations



61

Informal Resolution



62

Informal Resolution

- Fully discretionary: Requires complainant and respondent's voluntary, written consent
- May occur at any time after the parties receive the initial notice of allegations and prior to a determination regarding responsibility being reached.
- May not be required as condition of:
 - Enrollment/continuing enrollment,
 - Employment or continuing employment,
 - Enjoyment of any right, or
 - Waiver of the right to a formal investigation/adjudication



63

Informal Resolution

Party may withdraw at any time prior to a resolution

- Withdrawal triggers resumption of grievance process.

Not permitted in allegations of employee sexual misconduct toward a student



64

Consolidation and Dismissal of Formal Complaints



 Robbins Schwartz
One Team. Making Your Mission Ours.

65

Consolidation of Formal Complaints

Title IX Coordinator may consolidate formal complaints where the allegations of sex-based misconduct arise out of the same facts or circumstances.



 Robbins Schwartz
One Team. Making Your Mission Ours.

66

Dismissal of Formal Complaints

- Mandatory dismissal:
- Title IX Coordinator or designated investigator determines that conduct alleged in the formal complaint does not meet
 - (a) Title IX's definition of sexual harassment and/or
 - (b) Title IX's jurisdictional requirements.
- Dismissal does not preclude action altogether – just for purposes of Title IX.



67

Dismissal of Formal Complaints

- Discretionary dismissal if:
 - Complainant gives written notification of desire to withdraw formal complaint or certain allegations;
 - Respondent is no longer enrolled in or employed by the College; or
 - Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.
- A party may appeal a decision to dismiss a formal complaint or allegations therein.



68

Investigation of Formal Complaints



 Robbins Schwartz
One Team. Making Your Mission Ours.

69

Investigations: Written Notice

Required written notices

- Notice of allegations (upon receipt of a formal complaint)
- Notice of investigative interview, meeting, or hearing
- Notice of (mandatory or discretionary) dismissal



 Robbins Schwartz
One Team. Making Your Mission Ours.

70

Investigations: Evidence

- Equal opportunity for parties to provide:
 - Fact and expert witnesses
 - Inculpatory and exculpatory evidence
- No gag orders



71

Investigations: Advisors

- Both parties may select an advisor of their choosing
 - May, but need not be, an attorney
- Advisor's role is to provide support, guidance, advice
- May not speak on behalf of the party



72

Investigation: Access to Evidence

- Both parties must have equal access to inspect and review all evidence that is directly related to the complaint allegations.
- At the conclusion of the investigation and prior to the completion of the investigator's report, the investigator must send both parties a copy of all relevant evidence.
 - Be mindful of FERPA and student privacy considerations.
 - Notify parties of parameters/limitations on re-disclosure of records and evidence.



73

Investigation: Access to Evidence

- The parties will have 10 business days to submit a written response to the evidence, which the investigator must consider prior to completion of his/her investigative report.



74

Investigation: Preparation of Investigation Report

- After receiving/reviewing the parties' written responses, the investigator must create an investigative report that fairly summarizes the relevant evidence, which the investigator will forward to the Title IX Coordinator.
- Upon receipt of the investigator's report, the Title IX Coordinator will schedule a hearing.



Investigation: Preparation of Investigation Report

- At least 10 business days prior to the hearing, the Title IX Coordinator will:
 - Provide both parties with written notice of the hearing date, time, location, participants and purpose of the hearing; and
 - Send to each party (and advisors) the investigative report.
 - Allow parties 10 school days to submit a written response to the report.

Live Hearings



 Robbins Schwartz
One Team. Making Your Mission Ours.

77

Live Hearings: Process

- Conducted by designated Hearing Officer
 - Assigned by Title IX Coordinator
- A party may request a substitution if the participation of the Hearing Officer poses a conflict of interest.
 - Must contact the Title IX Coordinator within three (3) business days after the party's receipt of the hearing notice to make such a request.

 Robbins Schwartz
One Team. Making Your Mission Ours.

78

Live Hearings: Process

- Upon request, parties can be separated – requires appropriate technology
 - Must be requested at least 3 business days prior to hearing
 - Must allow parties to simultaneously see and hear each other



79

Live Hearings: Technology

- Technology considerations:
 - Parties must be able to hear and see each other.
 - Parties and Hearing Officer must be able to view evidence being presented.
 - Consider screen-sharing and/or sending documents electronically in advance.
 - Parties should have ability to communicate with their respective advisors in private.
 - Consider “breakout rooms.”



80

Live Hearings: Advisors

- Advisor from the College appointed if none available
 - 3 business days' notice required



81

Issues for Hearing

- Hearing Officer's role is to determine:
 - Whether facts presented establish that the alleged conduct occurred;
 - Whether that conduct constitutes Title IX sexual harassment, sexual violence, domestic violence, dating violence or stalking; and
 - If the answers to the above are "yes," which sanctions (if any) and remedies are appropriate.
- The evidence presented must be relevant to one or more of the issues above.



82

Considering Evidence

- Relevant documents may include, but are not limited to:
 - The formal complaint
 - The initial written notice of the allegations
 - Written statement(s) and responses by the parties and/or witnesses
 - The investigation report
 - Police reports, photographs and/or video footage (if any)
 - Prior discipline records
 - Only relevant to issue of appropriate sanction



Preponderance of the Evidence Standard

- “More likely than not”
- Whether the facts supporting the allegations have greater weight/strength than the facts presented in denial of the allegations
- If 50/50, no violation.

Live Hearings: Cross-Examination

- Advisors are permitted to ask opposing party and witnesses all relevant questions and follow-up questions.
 - Relevance determined by Hearing Officer.



85

Live Hearings: Rape Shield Protections

- Questions about the complainant's sexual pre-disposition or prior sexual behavior are not permitted unless:
 - Offered to prove that someone other than the respondent committed the alleged conduct; or
 - Questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.



86

Post-Hearing Procedure



87

Written Determination

Issued to both parties simultaneously
within 7 business days of decision being
reached.



88

Written Determination

- Must include:
 - Identification of allegations
 - Description of procedural steps taken
 - Findings of fact supporting determination
 - Conclusions regarding application of conduct standards
 - Statement & rationale for result of each allegation, including:
 - Determination of responsibility
 - Disciplinary sanctions being imposed
 - Whether any remedies will be provided to the complainant
 - Procedures and permissible bases for complainant and respondent to appeal



89

Written Determination

- Note: Pursuant to the August 2021 Letter to Stakeholders, a decision-maker may rely upon statements by an individual who does not submit to cross-examination in reaching a determination.



90



91

Appeals

- Both parties have right to appeal:
 - Any determination regarding responsibility
 - Any dismissal of a formal complaint or allegations therein
- Party must submit written appeal request to Title IX Coordinator
 - Within 7 business days of receipt of written determination or dismissal
- Title IX Coordinator must forward request to designated individual assigned to review appeal.

Robbins Schwartz
One Team. Making Your Mission Ours.

92

Appeals: Grounds to Appeal

- Procedural irregularity occurred
- New evidence or information exists that could affect outcome
- Conflict of interest or bias on part of Title IX Coordinator, Investigator or Hearing Officer which affected outcome
- Sanction disproportionate to violation



93

Appeals: Process

- Appellate decision-maker must afford both parties the opportunity to submit a statement
- Written decision issued to both parties simultaneously within 7 business days of conclusion of the review
 - Describes outcome and rationale
- Includes statement that decision is final



94

Questions?

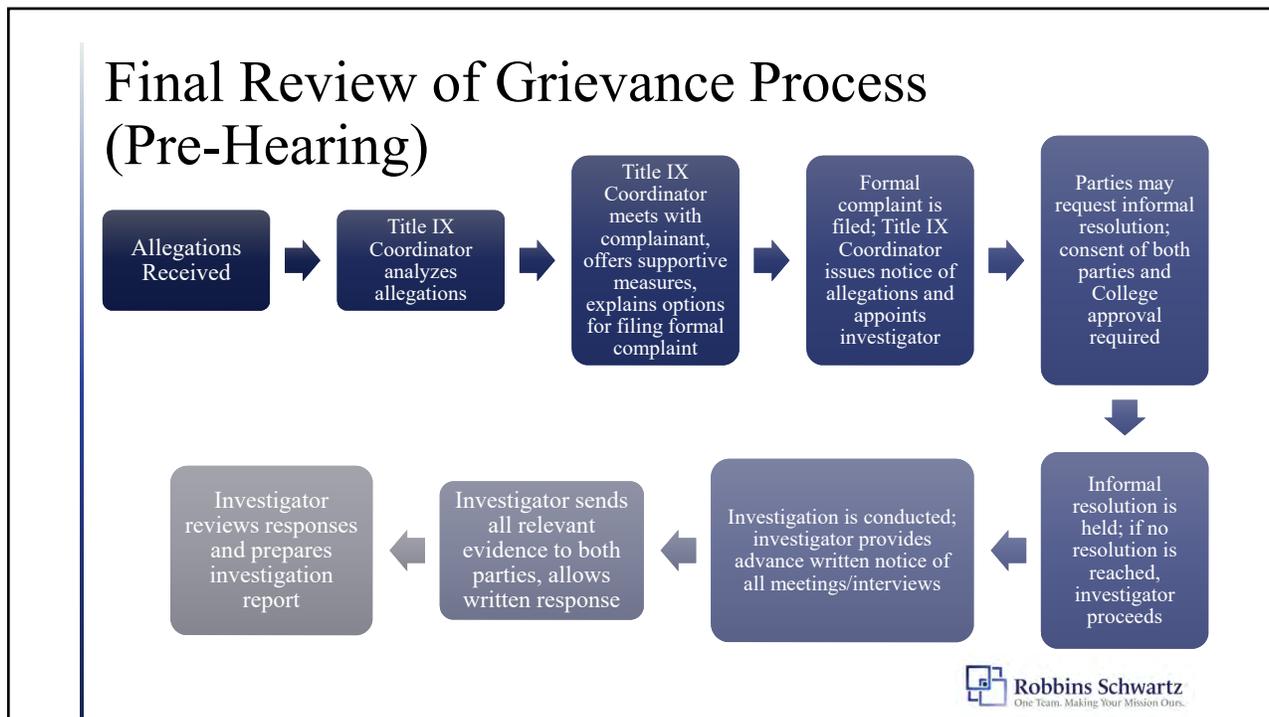


95

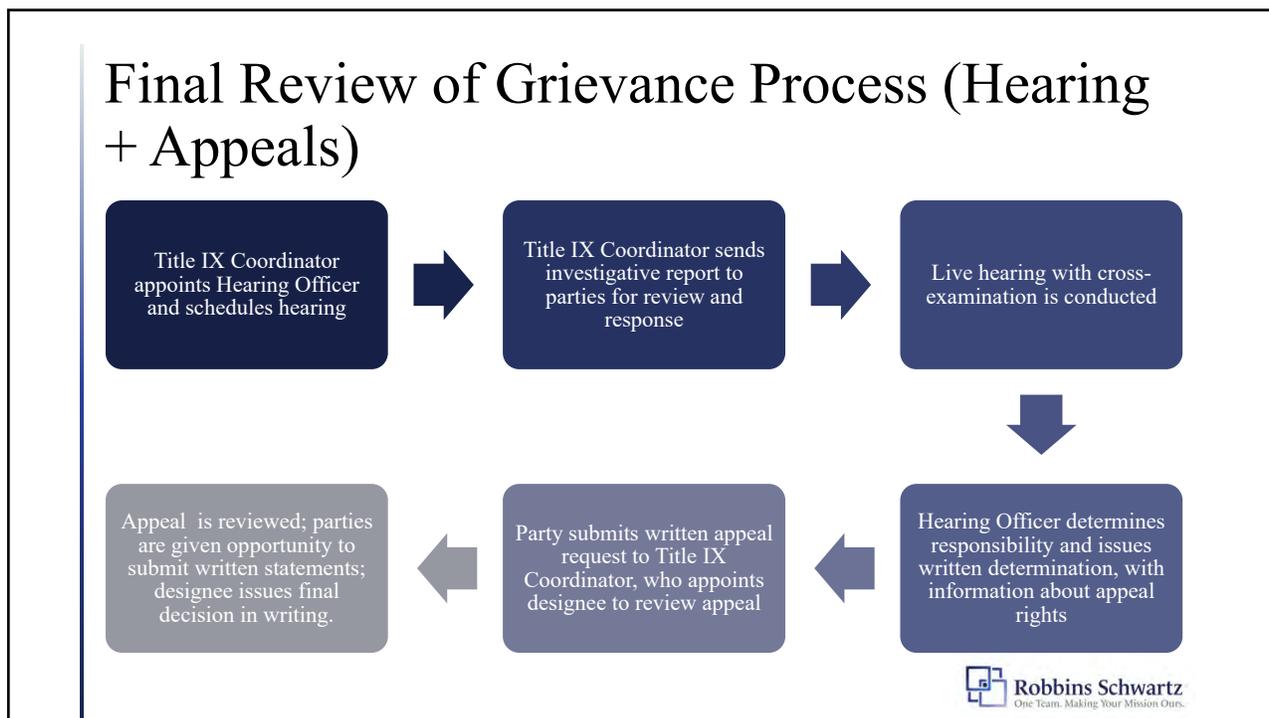
Final Review and
Hypothetical



96



97



98

Hypothetical

- Alex, a student, reports to her College advisor that a classmate, Aaron, has been making inappropriate sexual jokes and innuendos.
 - They both attended the same virtual summer school course.
 - They were assigned to work on a project together, much of which was to be done on their own time, over Zoom, and required the exchange of personal contact information.
 - After the project was complete, Aaron allegedly called Alex and asked her out. Alex said yes.
 - Alex states that they went on a few off-campus dates, but Alex decided not to pursue the relationship any further.



99

Hypothetical

- Alex alleges that Aaron began telling all of their mutual friends that Alex “sleeps around,” and he allegedly began making false statements that she sent him sexually explicit photos.
- Alex alleges that Aaron’s comments took place over the course of the summer, at various off-campus class gatherings where the instructor and other students were present.
- Most recently, they both attended the same party at a house owned by the College’s Peer Mentoring Club, of which Alex is a member.
- At the party, Aaron (who is 21) was drinking. He tried to pressure Alex (who is 19) into drinking as well. Alex reports that Aaron stated, “Rumor has it, you’re more fun when you’re drunk.”
- Alex reports that she told Aaron he was not funny, and to leave her alone.



100

Hypothetical

- Aaron reportedly became drunk, and one of Alex’s friends witnessed Aaron showing other party-goers a sexually explicit photo of a female and telling them it was Alex.
 - The photo did not show a face, so others at the party did not know if the photo was of Alex or not. Some male classmates seemed to believe Aaron.
- Alex is distraught. Aaron is enrolled in two of the same classes as Alex for the fall 2021 semester. Alex is considering dropping the classes so she will not have to interact with Aaron.
- The College advisor documents her discussion with Alex. What should the College advisor do with these allegations? Discuss.



101

Hypothetical

- Based on these facts, analyze the jurisdiction under Title IX.
 - Did Aaron’s conduct occur in the College’s education program or activity?
- Do Aaron’s actions constitute Title IX sexual harassment?
- Reminder: Three types of sexual harassment:
 - Quid pro quo harassment by a college employee
 - Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access
 - Any instance of sexual assault, dating violence, domestic violence or stalking



102

Hypothetical

- Alex files a formal complaint. The parties proceed to a live hearing.
 - Can Aaron's advisor ask Alex if she has ever had a sexual relationship with Aaron?
- After a full grievance process, the College's appointed Hearing Officer (who is close friends with the College advisor to whom Alex made her initial report) finds that Aaron is responsible for engaging in Title IX sexual harassment.
 - After receiving the Hearing Officer's determination, Aaron feels that the Hearing Officer had a conflict of interest that affected the outcome of the grievance process. He submits an appeal request to the Title IX Coordinator.
- What steps does the Title IX Coordinator need to take with respect to the appeal?



103



104



Follow Us on Twitter!

@RSchwartzLaw

